

## **REMARKS**

### **Status of the claims**

Claims 1-4, 9-13, 18-28, 30-32, 34-36, 38-40, 42-45, 47-49, 51-53, 55-57, 61 and 62 are currently pending in the case. Claims 5-8, 14-17, 29, 33, 37, 41, 46, 50, 54 and 58-60 are cancelled. Claims 1, 13, 27, 28, 30, 31, 34, 35, 38, 39, 43, 47, 48, 51, 52, 55 and 56 are amended.

The Final Office Action has indicated that claims 60 and 61 were allowable. The action further indicated that claims 29, 33, 37, 41, 46, 50, 54 and 58 would be allowable if rewritten in independent form including all limitations in the base claim and any intervening claims.

Applicant has therefore cancelled claims 29, 33, 37 and 41 and added their specific limitations to independent claim 1. Claim 1 was also modified to remove the limitation that the promoter used must be a “peaked” promoter, which Applicant believes is not required for allowability. (Applicant bases this belief on the observation that in a previous Action issued before Applicant amended the claims to recite “peaked” promoters, the Final Action had indicated that these claims were allowable if rewritten.) Furthermore, although the Final Action indicated that the limitations of intervening claims 5-8 would be required for allowability, Applicant believes that these limitations to be redundant in light of the narrower limitations of claim 29, 33, 37 and 41 and therefore these limitations were not incorporated in claim 1. Claims 5-8 were, however, cancelled. Applicant therefore believes that independent claim 1 and its dependent claims are now in allowable form in light of statements made in the Final and previous Actions.

Similarly, Applicant has cancelled claims 46, 50, 54 and 58 and added the limitations of those claims to independent claim 13. Again, for the reasons given above with regard to claim 1,

claim 13 was also modified to remove the limitation that the promoter used must be a “peaked” promoter, which Applicant believes is not required for allowability. Also similar to claim 1, although the Final Action indicated that the limitations of intervening claims 14-17 would be required for allowability, Applicant again believes that these limitations to be redundant in light of the narrower limitations of claim 46, 50, 54 and 58 and therefore these limitations were not incorporated in claim 13. Claims 14-17 were, however, cancelled. Applicant therefore believes that independent claim 13 and its dependent claims are now in allowable form in light of statements made in the Final and previous Actions.

Due to the cancellation of intervening claims 5-8 and claims 14-17 it was required to make amendments to claims 27, 28, 30, 31, 34, 35, 38, 39, 43, 47, 48, 51, 52, 55 and 56 to add the limitations of the cancelled intervening claims. The amendment was a matter of form only and it is believed that the scope of these amended claims has not changed as a result of these amendments.

Based on the Examiner’s previous indications, Applicant believes that the amendments and cancellations place all of the claims in condition for allowance, and favorable action by the Examiner is earnestly requested.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicant respectfully submits that all claims are in condition for allowance, and solicits an early indication to that effect. Should the Examiner have any questions regarding this response, please contact the undersigned at (512) 542-8441.

Please date stamp and return the enclosed postcard evidencing receipt of these materials.

Respectfully submitted,

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